

**DW 00-247**

**DANIELS LAKE WATER WORKS, INC.**

**Investigation into Quality of Service and  
Continued Operation as a Viable Public Utility**

**Order Establishing Surcharge and  
Imposing Fines for Failure to Cooperate in Transfer of System**

**ORDER NO. 24,622**

**May 12, 2006**

**I. BACKGROUND**

Daniels Lake Water Works, Inc. (Daniels Lake) is a regulated public utility pursuant to RSA 363:2 and RSA 362:4 that delivers water service to approximately 30 customers in a limited area of the Town of Weare. On December 22, 2000, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,604, 85 NH PUC 846 (2000), which placed Daniels Lake in receivership pursuant to RSA 374:47-a. On December 29, 2000, the Commission designated Water System Operators, Inc. (WSO) to serve as the operator of Daniels Lake during the receivership.

The Commission also directed Staff to investigate a resolution of the problems with management of Daniels Lake. On February 6, 2004, Staff filed a report recounting WSO's interest in acquiring Daniels Lake. However, on December 30, 2004, Staff advised that WSO was no longer interested in pursuing the acquisition due to other business considerations.

The Commission's Audit Staff conducted a review of the financial records of the Daniels Lake system and advised Commission Staff, on February 22, 2006, that Daniels Lake owed WSO \$15,600. The audit also indicated that a rate increase of \$7 per customer per month was necessary to meet on-going expenses and avoid any further accumulation of debt to WSO.

The \$7 increase, however, would not recover the \$15,600 debt to WSO. Staff filed a letter on February 22, 2006, attaching the Audit Staff report and recommending a rate increase of \$7 per customer per month for water service delivered by Daniels Lake, which would raise the monthly charge to \$42. Staff noted that Daniels Lake's rates had not changed since it was first franchised in 1995 and opined that the current rate may be unreasonably low.

Staff also recommended that a surcharge of \$31 per month be added to each customer bill, to allow repayment to WSO of the \$15,600 debt. Staff stated that the collection of a \$31 surcharge, based on 28 customers taking service, would repay WSO over an 18-month period. Staff noted that if a transfer of ownership occurred, an agreement could be put in place to enable WSO to recover the full amount.

Staff also informed the Commission that Pennichuck East Utility, Inc. (PEU) had offered to acquire the assets of Daniels Lake. According to Staff, Daniels Lake owner Josef Fitzgerald pledged to cooperate fully to transfer Daniels Lake to a new owner. Staff noted, however, that, to date, Mr. Fitzgerald had not responded to PEU's offer.

Staff concluded that Mr. Fitzgerald's lack of cooperation was preventing termination of the receivership of Daniels Lake and the transfer of the water system to a new owner. Staff asked the Commission to order Mr. Fitzgerald's appearance before the Commission to address his failure to cooperate on transfer of the system. Staff further noted that, resulting from a previous order in Docket No. DW 99-133, Daniels Lake remains liable for fines for failure to file annual reports. Staff recommended that the Commission also notice this issue for Mr. Fitzgerald's appearance so that all outstanding issues could be resolved in one proceeding.

On March 24, 2006, the Commission issued Order No. 24,604, scheduling a hearing for April 18, 2006, and directed Mr. Fitzgerald to appear in order to respond to Staff's assertion that he has not cooperated in the transfer of the water system, and to show cause why he should not be subjected personally to a penalty of up to \$10,000 pursuant to RSA 365:42. The Commission also determined that the proposed rate change and the proposed surcharge would be addressed at the scheduled hearing.

On April 3, 2006, the Commission received a letter from Dawn Levandoski, a customer of Daniels Lake, expressing concern about the proposed surcharge. The hearing took place as scheduled. Several customers of Daniels Lake were present at hearing. Neither Mr. Fitzgerald, nor his attorney, appeared.

## **II. POSITIONS OF THE PARTIES**

### **A. Daniels Lake Customer Richard Butt**

Richard Butt, a customer of Daniels Lake, asked at hearing about the status of the penalties and fines previously imposed by the Commission. Mr. Butt stated that the Commission had imposed the penalties after a hearing in 2001 and that the fines had accrued at \$100 per day amounting to approximately \$41,300. Mr. Butt also questioned the length of time that had lapsed with nothing resolved for customers. Mr. Butt also inquired about the ownership of the real estate where the well house is located. Finally, Mr. Butt recommended that the Commission extend the time for recovery of the WSO debt to 36 months, thereby reducing the monthly payment for customers.

**B. Commission Staff**

At hearing, Staff repeated its recommendation that the Commission order a \$7 per month increase in rates to recover the costs of ongoing maintenance and operations, and a surcharge of \$31 per month for a period of 18 months to recover the \$15,600 debt owed to WSO. Staff offered as an exhibit an April 14, 2006 letter from Mr. Fitzgerald's counsel to counsel for PEU in response to PEU's offer to purchase the Daniels Lake assets for \$100. The letter stated that Mr. Fitzgerald would accept a purchase price of \$1,000 provided that it included a statement "to the effect that Josef Fitzgerald is signing this in the capacity as nominal owner and at all times was a straw and has no specific knowledge whatsoever of any debts, operations, operation procedures, contracts, or obligations of Daniels Lake Water Works, Inc." According to Staff, PEU rejected these terms.

In response to questions from Mr. Butt, Staff sought to explain why so much time had elapsed since Daniels Lake was originally placed in receivership. Staff noted that, at the time of the receivership, title to the property on which the well and pump house are located had not been transferred into the name of the utility. Staff worked to effect the property transfer, but it took substantial time. Staff also explained that at one point WSO had expressed an interest in purchasing the assets. Ultimately, according to Staff, WSO decided not to go through with the purchase, which caused additional delays.

Staff explained that the fines referred to by Mr. Butt had accrued for failure of Daniels Lake to file its annual reports. In response to Commission questions, Staff indicated that the Commission had not attempted to collect the fines because the Company lacked the assets against which such fines would be recoverable.

### III. COMMISSION ANALYSIS

We first address Staff's recommendation to increase rates by \$7 per month and to add a surcharge of \$31 per month to recover money owed WSO. We find that Staff's recommendation for a rate increase to pay for ongoing operation and maintenance is supported by the Staff Audit and is necessary to adequately recover ongoing expenses. We therefore approve the rate increase as just and reasonable pursuant to RSA 378:7.

We appreciate Staff's recommendation to impose a surcharge that would recover the amounts owed to WSO within 18 months and we support full repayment of WSO's uncollected, incurred expense. However, we note that customers would experience almost a doubling of current invoices with Staff's recommendation. To balance the interests of customers and the necessity to pay WSO in full within a reasonable period of time, we approve a surcharge that will repay WSO within 24 months. The amount of the surcharge shall be \$23.21.

We note that Daniels Lake is subject to outstanding fines in the approximate amount of \$39,800 arising out failures to file annual reports. It is clear that there is no prospect of recovering these fines out of the utility's equity, as there is none to speak of beyond the physical plant necessary for the operation of the system, and the imposition of fines also presents an obstacle to the transfer of Daniels Lake assets. For these reasons, we will forego the recovery of these fines.

A different result is required with respect to Mr. Fitzgerald personally, however. RSA 365:42 provides that "[e]very officer and agent" of a public utility "who shall wilfully violate . . . or who wilfully fails to obey, observe, and comply with any order of the commission . . . shall be subject to a civil penalty, as determined by the commission, not to exceed \$10,000

for each violation, or for each day of a continuing violation.” The record of this docket is replete with examples of Mr. Fitzgerald’s lack of cooperation in the transfer of the utility assets and his neglect in the operation of the utility. Further evidence of his disregard of the regulatory regime to which he is subject as the owner of a utility is his failure to appear at the April 18, 2006 hearing despite our directive that he appear to show cause why he should not be fined personally \$10,000. We find that Mr. Fitzgerald’s conduct amounts to willful failure to obey, observe, and comply with the Commission’s orders within the meaning of the statute. Therefore, pursuant to our authority under RSA 365:42, we impose on Mr. Fitzgerald a personal civil penalty of \$10,000, subject to the following conditions and timeline.

Payment of the \$10,000 fine shall occur in installments. The first payment, in the amount of \$1,000, shall be made on or before July 14, 2006. The second payment, in the amount of \$1,000, shall be made on or before August 11, 2006. The third payment, in the amount of \$2,000, shall be made on or before September 8, 2006. The fourth payment, in the amount of \$2,000, shall be made on or before October 13, 2006. The fifth and final payment, in the amount of \$4,000, shall be made on or before November 10, 2006. In the event any payment is not timely made and received at the office of the Commission, the matter will be promptly forwarded to the Attorney General pursuant to RSA 365:43 and 374:41, as appropriate. In the event Mr. Fitzgerald takes all action necessary to accomplish the successful transfer of Daniels Lake to a responsible operator, the balance of the personal civil penalty shall be indefinitely suspended and the obligation to make any payments outstanding at the time of such action shall be extinguished, contingent upon such action not being reversed or nullified by any act or failure to act by Mr. Fitzgerald.

**Based upon the foregoing, it is hereby**

**ORDERED**, that WSO be authorized as receiver for Daniels Lake Water Works, Inc. to increase water rates by the amount of \$7 per month, effective with the next billing period following issuance of this order; and it is

**FURTHER ORDERED**, that Water Systems Operators, Inc. shall add a surcharge of \$23.21 per month to customer bills for a period of 24 months to recover the \$15,600 it is owed by the system; and it is

**FURTHER ORDERED**, that conforming tariffs shall be filed with the Commission pursuant to Puc 1603.05; and it is

**FURTHER ORDERED**, that pursuant to RSA 365:42, Mr. Josef Fitzgerald is hereby subject to a personal civil penalty of \$10,000, as described more fully above.

By order of the Public Utilities Commission of New Hampshire this twelfth day of May, 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary